

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.1291 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

The appellants herein are the petitioners in W.P.No.21827 of 2017. They have preferred this appeal, under Clause 15 of the Letters Patent, aggrieved by the order of the Learned Single Judge in W.P.M.P.No.26862 of 2017 in W.P.No.21827 of 2017 dated 21.07.2017 directing that the enquiry under Section 51 of the A.P. Co-operative Societies Act, 1964 (for short "the Act") shall go on; but, however, its implementation would be subject to the final result of the Writ Petition.

The order impugned in the writ petition is the proceedings of the Registrar of Cooperative Societies, Andhra Pradesh, Guntur dated 03.05.2017 directing that an enquiry be caused under Section 51 of the Act with regards certain fraudulent transactions made in the 7th respondent-bank, and misappropriation of funds by discharging fake fix deposits etc. While the impugned order refers to other matters also, it would suffice to note that an enquiry is sought to be caused by the Registrar of Co-operative Societies, in the exercise of his powers under Section 51 of the Act, since the District Co-operative Officer, Ananthapuram had, along with his letter dated 25.09.2014, enclosed the enquiry report of the Divisional Cooperative Officer, Ananthapuram dated 03.09.2014 that fake fixed deposit bonds were discharged for a sum of Rs.12,22,316/-; the fake fixed deposit amounts were credited in the S.B.Account No.14471 of one Sri P.Ramesh, son of Sri P.Ramaiah, Korrapadu Village, B.K.Samudram Mandal which was opened duly enclosing Voter-ID card No.UAV0354789; proper records were not maintained by the bank, and proper verification of KYC norms was not done; it was felt that there was active connivance of the bank staff, in

opening such improper accounts, to commit this fraud intentionally; Rs.1,60,000/- was credited on 23.04.2013, and Rs.1,70,000/- was withdrawn on 14.05.2013 from this account, without relevant entries in the scroll and day book, and without supporting challans; and there was a suspicion that this fictitious account was created to make fraudulent transactions through it.

The impugned order also records that the inspection reports of National Bank for Agricultural and Rural Development Regional Office, Hyderabad (for short “the NABARD”), and especially the report for the year ending 31.03.2014, confirmed the occurrence of many such frauds in the bank, against which no report had been furnished by the bank so far of having taken concrete steps in bringing such cases to a logical conclusion so as to curtail further occurrence of such frauds; and he (i.e the Registrar of the Cooperative Societies) was satisfied, on an examination of the entire issue and the material available, that it was expedient to order an enquiry under Section 51 of the Act to probe deep into the matter, to cull out the facts, and fix specific responsibility against those concerned.

Section 51 of the Act relates to inquiry and enables the Registrar of Co-operative Societies, on his own motion, to hold an inquiry, or direct some person authorised by him by an order in this behalf to hold an enquiry, into the constitution, working and financial condition of a society. The contention urged before the Learned Single Judge was, primarily, that the Registrar of Co-operative Societies lacked jurisdiction to order an enquiry under Section 51 of the Act, in view of Section 115-D of the said Act.

We pointed out to Sri Vedula Srinivas, learned counsel for the appellant-writ petitioners, that, since the main Writ Petition is still pending adjudication before the Learned Single Judge and this appeal is

only against an interlocutory order, any finding recorded by us on the contentions urged by him may adversely effect the appellants' interest in the main Writ Petition. Learned Counsel, however, insisted that we examine the question whether or not the Registrar of Co-operative Societies has jurisdiction to cause an enquiry under Section 51 of the Act, as the order of the Learned Single Judge enabled the Registrar to proceed to cause an enquiry and take action thereafter, subject only to the rider that any such action taken under Section 51 of the Act would be subject to the result of the Writ Petition; and, consequently, no useful purpose would be served in awaiting a final decision, in the Writ Petition, on this question of law. It is necessary for us, therefore, to examine whether Section 115-D of the Act ousts the jurisdiction of the Registrar to cause an enquiry under Section 51 of the Act.

Sri Vedula Srinivas, learned counsel for the appellants, would submit that Section 115-D of the Act, inserted by Act 16 of 2007, carves out an exception to the other provisions of the Act; these special provisions are applicable only to Co-operative Credit Societies; the 7th respondent is one such society of which the appellants are the Directors; these Societies have been conferred autonomy in all financial and internal administrative matters, subject only to the guidelines issued by the Reserve Bank of India (RBI) or NABARD; the Government of India had prepared a Package for Revival of the Short Term Rural Cooperative Credit Structure; among the reforms suggested therein was the need to remove State intervention in all financial and internal administrative matters of cooperative societies; to implement the reforms, suggested in the Package, a memorandum of understanding was entered into between the Government of India, the Government of Andhra Pradesh and NABARD on 29.08.2016; the said Memorandum records the undertaking of the Government of Andhra Pradesh to bring

in amendments to the Act to give effect to the reforms envisaged under the Package; and, as Section 115-D of the Act was introduced pursuant to the memorandum of understanding and autonomy in financial and internal administrative matters has been conferred on such cooperative credit societies, the jurisdiction of the Registrar of Co-operative Societies, to cause an enquiry into the affairs of such Societies, is ousted; and, after introduction of Section 115-D of the Act, the power conferred on him, under Section 51 of the Act, cannot be exercised by the Registrar of Co-operative Societies to cause an enquiry into the internal administrative affairs of such societies.

On the other hand, Learned Government Pleader for Co-operation would submit that Section 115-D of the Act only confers autonomy on cooperative credit societies in matters relating to its finance and internal administration; even this autonomy, that too in the areas specified in Section 115-D(2), is made subject to the guidelines of RBI and NABARD; financial autonomy, and autonomy in internal and administrative matters, would not extend to financial misappropriation and fraudulent acts; in any event, Clause (24) of Section 115-D makes the provisions of the Act applicable till guidelines are issued by RBI/NABARD; no guidelines of RBI/NABARD, which disables the Registrar of Co-operative Societies to cause an enquiry under Section 51 of the Act, has been brought to the notice of this Court by the appellants herein; and, in such circumstances, the Learned Single Judge was justified in refusing to interdict the Registrar of Co-operative Societies from proceeding to have an enquiry caused under Section 51 of the Act.

Section 115-D of the Act is a special provision applicable only to Co-operative Credit Societies. The 7th respondent is one such cooperative credit society. Section 115-D of the Act stipulates that,

notwithstanding anything contained in the Act, the provisions under Section 115-D of the Act would apply to Co-operative Credit Societies.

Section 115-D(2) reads thus:

“The Co-operative Credit Society shall have autonomy in all financial and internal administrative matters, subject to the guidelines of Reserve Bank of India/National Bank for Agriculture and Rural Development in the following areas:-

- (i) Interest rates on deposits and loans,
- (ii) Borrowing and investments,
- (iii) Loan policies and individual loan decisions,
- (iv) Personal policy, staffing, recruitment, posting, and compensation to staff, and
- (v) Internal control systems, appointment of Auditors and compensation for the audit.”

Section 115-D(24) stipulates that the existing provisions of the Act, Rules and guidelines shall continue to be in force till guidelines/stipulations are issued by RBI/NABARD where required in the above provisions.

A “**non obstante clause**” is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found in the same enactment, that is to say, to avoid the operation and effect of all contrary provisions. (**Laxmi Devi v. State of Bihar**¹; **Union of India v. G.M. Kokil**²). It is equivalent to saying that, inspite of the laws mentioned in the non-obstante clause, the provision following it will have full operation, or the laws embraced in the non-obstante clause will not be an impediment for the operation of the enactment or the provision in which the non-obstante clause occurs. (**State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh**³; **South India Corpn. (P) Ltd. v. Secretary, Board of Revenue, Trivandrum**⁴). Normally the use of a non-obstante clause by the legislature in a statutory provision, is equivalent to saying that no

¹ (2015) 10 SCC 241

² 1984 Supp. SCC 196

³ (2005) 9 SCC 129

⁴ AIR 1964 SC 207

other provision of the Act shall be an impediment to the measure. Use of such an expression is another way of saying that the provision, in which the non-obstante clause occurs, would wholly prevail over the other provisions of the Act. Non-obstante clauses are to be regarded as clauses which remove all obstructions which might arise out of any of the other provisions of the Act in the way of the operation of the principal enacting provision to which the non-obstante clause is attached. (**Bihar Rajya M.S.E.S.K.K. Mahasangh³; Iridium India Telecom Ltd. v. Motorola Inc⁵**). While interpreting a provision containing a non-obstante clause, it should first be ascertained what the enacting part of the Section provides, on a fair construction of the words used according to their natural and ordinary meaning, and the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in any other law which is inconsistent with the Section containing the non-obstante clause. (**Aswini Kumar v. Arabinda Bose⁶; A.V.Fernandez v. State of Kerala⁷**). The effect of the non-obstante clause in Section 115-D is that the provisions of Section 115-D would prevail notwithstanding anything contrary thereto in any of the provisions of the Act. It is only if Section 51 is held to contravene Section 115-D, would exercise of power under Section 51, to the extent of contravention, be impermissible. Section 115-D(2) confers autonomy on cooperative credit societies in all financial and internal administrative matters in the areas referred to in Clauses (i) to (v) thereunder. These areas are confined to interest rates on deposits and loans, borrowings and investments, loan policies and individual loan decisions, personal policy, staffing, recruitment of staff, etc and internal control systems, appointment of auditors and compensation for audit.

⁵ (2005) 2 SCC 145

⁶ AIR 1952 SC 369

⁷ AIR 1957 SC 657

It does not extend to fraudulent acts or to misappropriation of funds. The autonomy conferred on co-operative credit societies in the aforesaid five areas is also made subject to the guidelines issued by RBI/NABARD. It is evident, therefore, that the autonomy granted to cooperative credit societies is not unfettered or absolute, but is circumscribed by twin limitations i.e (1) the autonomy is limited to the five areas mentioned in Section 115-D(2), and (2) even in these five areas, the autonomy is subject to the guidelines issued by RBI and NABARD.

Sri Vedula Srinivas, learned counsel for the appellant-writ petitioners, would submit that a purposive construction should be placed on Section 115-D in the light of the Package for Revival of Short Term Rural Cooperative Credit Structure, and the Memorandum of Understanding; and, when so construed, it is evident that the object of insertion of Section 115-D of the Act is to confer complete autonomy on all co-operative credit societies, and exclude all forms of interference by the Registrar of Co-operative Societies in matters of finance and internal administration of such societies.

The primary rule of interpretation of statutes is that a literal construction should be given to the provision, and resort to other aids is permissible only when the provision suffers from some ambiguity. The statutory language should be read grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. (Suthendran v. Immigration Appeal Tribunal⁸; Farrell v. Alexander⁹; R v Inhabitants of Banbury¹⁰). The Legislature is to be credited with good sense, so that when such an approach produces injustice, absurdity, contradiction or stultification of statutory

⁸ (1976) 3 ALL ER 611

⁹ (1976) 2 All ER 721

¹⁰ (1834) 1 Ad & EI 136

objective the language may be modified sufficiently to avoid such disadvantage, though no further'. (Suthendran v. Immigration Appeal Tribunal¹¹; Becke v Smith¹²; R v Inhabitants of Banbury¹⁰; Tzu-Tsai Cheng v. Governor of Pentonville Prison¹³; Applin v. Race Relations Board¹⁴; Harbhajan Singh v. Press Council of India¹⁵; Justice G.P. Singh — Principles of Statutory Interpretation (8th Edn., 2001).

A departure from the golden rule is permissible only if it can be shown that the legal context in which the words are used, or the object of the statute in which they occur, require a different meaning. (**Justice G.P. Singh — Principles of Statutory Interpretation (8th Edn., 2001); Harbhajan Singh¹⁵**). If reading statutory words in its primary and natural sense, would lead to some repugnance or inconsistency with the rest of the instrument, the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency. (**Grey v. Pearson¹⁶; Kehar Singh v. State (Delhi Admn.)¹⁷; Maulavi Hussein Haji Abraham Umarji v. State of Gujarat¹⁸**). An 'ordinary meaning', or a 'grammatical meaning', does not imply that the Judge attributes a meaning to the words of a statute independent of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and unresearched context and purpose in and for which they are used. By enabling citizens to rely on ordinary meanings, unless notice is given to the contrary, the legislature contributes to legal certainty and predictability for citizens, and to greater transparency in its own decisions, both of which are important values in a democratic society. (**Cross in Statutory Interpretation (3rd Edn., 1995;**

¹¹ (1976) 3 ALL ER 611

¹² (1836) 2 M&W 195

¹³ (1973) 2 ALL ER 204

¹⁴ (1974) 2 ALL ER 73

¹⁵ (2002) 3 SCC 722

¹⁶ 6 H.L.Ca' 61

¹⁷ (1988) 3 SCC 609

¹⁸ (2004) 6 SCC 672 : 2004 SCC (Cri) 1815

Harbhajan Singh¹⁵). As we are satisfied that the language in Section 115-D does not suffer any ambiguity, aid of other cannons of interpretation need not be resorted to.

Clause (7) of the Package relates to legal and institutional reforms, and Clause (7.2)(ii) thereof stipulates that, as carrying out legal amendments is a time consuming process, the State Governments may issue Executive Orders, under the existing powers, to bring in the desired reforms which will relate to removing State intervention in all financial and internal administrative matters in Co-operatives. Pursuant to this Package, a Memorandum Of Understanding was entered into on 29.08.2006 between the Government of India, the Government of Andhra Pradesh and NABARD. Clause (9) of the said M.O.U. records the undertaking of the Government of Andhra Pradesh to bring in amendment to the Act, and to any other relevant Acts, to give effect to the reforms envisaged under the Package in respect of all entities which are part of the cooperative credit societies. Clause (9.2) thereof reads thus:

“Providing autonomy to CCS in all financial and internal administrative matters, especially in the following areas:

- (i) interest rates on deposits and loans in conformity with RBI guidelines,
- (ii) borrowing and investments,
- (iii) loan policies and individual loan decisions,
- (iv) personal policy, staffing, recruitment, posting, and compensation to staff, and
- (v) internal control systems, appointment of auditors and compensation for the audit.”

The areas of autonomy specified in Clause (9.2) of the MOU has been reproduced in Section 115-D(2) of the Act, and jurisdiction has been conferred on RBI and NABARD to frame guidelines on matters enumerated in Clauses (i) to (v) of Section 115-D(2) of the Act; and interference in the financial and internal administrative autonomy of

the cooperative credit societies, contrary to such guidelines, would be impermissible.

As noted hereinabove, Clause (24) of Section 115-D of the Act stipulates that the existing provisions of the Act would continue till guidelines/stipulations are issued by RBI/NABARD where required in all the sub-sections of Section 115-D. Even with respect to the areas, referred to in Clauses (i) to (v) of Section 115-D(2) of the Act, it is only on guidelines being issued by RBI/NABARD would the other provision of the Act, including Section 51 thereof, cease to operate. No guidelines, issued by NABARD or RBI, more particularly restraining the Registrar of Co-operative Societies from enquiring into allegations of fraudulent transactions in, and misappropriation of funds of, co-operative credit societies has been brought to our notice and, consequently, Section 51 of the Act would continue to remain in force, and the Registrar of Co-operative Societies is entitled to exercise his power to cause an enquiry into allegations of fraud in, and misappropriation of the funds of, the 7th respondent-co-operative credit society.

Even otherwise, the enquiry which is sought to be caused by the Registrar of Co-operative Societies is into certain fraudulent transactions made in the 7th respondent-bank, and regarding misappropriation of funds by discharging fake fixed deposits. Financial and internal administrative autonomy conferred on co-operative credit societies would not extend to permitting its directors and employees to indulge in fraudulent transactions or in misappropriation of funds. Consequently Section 115-D of the Act, including sub-section (2) thereof, cannot be so construed as to preclude the Registrar of Co-operative Societies from causing an enquiry in this regard.

A writ of mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. **(C.R. Reddy Law College Employees'**

Association, Eluru, W.G. District v. Bar Council of India, New Delhi¹⁹). As the extra-ordinary jurisdiction of the High Court, under Article 226 of the Constitution of India, is discretionary, it is not to be exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will, ordinarily, be exercised subject to certain self-imposed limitations, (**Thansingh Nathmal v. Supdt. of Taxes²⁰**), and not as a matter of course. The discretionary jurisdiction, under Article 226 of the Constitution of India, must be exercised with great caution and only in furtherance of public interest, and not merely on the making out of a legal point. Larger public interest must be kept in mind in order to decide whether intervention of the Court is called for or not (**Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkinson Pvt Ltd²¹**; **Air India Ltd v. Cochin International Air Port Ltd²²**; **Rashpal Malhotra v. Mrs. Saya Rajput²³**; **Council of Scientific and Industrial Research v. K.G.S. Bhatt²⁴**). Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is involved. (**Rashpal Malhotra²³**; **K.G.S. Bhatt²⁴**). Larger public interest would require Directors/employees of banks/co-operative credit societies to refrain from indulging in fraudulent transactions or from misappropriating its funds. Any enquiry, which the Registrar may cause, in this regard should have been welcomed and not sought to be interdicted by the appellant herein for, if they have nothing to hide, they should not fight shy of an enquiry being caused into the allegations of fraudulent transactions and misappropriation of funds, as they can, thereby, ensure that their reputation and integrity is not besmirched.

¹⁹ 2004(5) ALD 180 (DB)

²⁰ AIR 1964 SC 1419

²¹ (2005) 6 SCC 138

²² (2000) 2 SCC 617

²³ AIR 1987 SC 2235

²⁴ AIR 1989 SC 1972

We are satisfied, therefore, that the Learned Single Judge was justified in refusing to interdict the process of enquiry under Section 51 of the Act, and in making the enquiry subject to the result of the Writ Petition. In an intra-Court appeal, under Clause 15 of the Letters Patent, interference with the order of the Learned Single Judge, that too an interlocutory order, would not be justified, save patent illegality. We find no such infirmity in the order under appeal. Suffice it to make it clear that we have not expressed any opinion on merits and the enquiry under Section 51 of the Act shall be caused, into the allegations made in the impugned proceedings dated 03.05.2017, uninfluenced by any observations made by us in this order, or by the pendency of the Writ Petition before the Learned Single Judge.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

07th September, 2017

Note: L.R. Copy to be marked.
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**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
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